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SUBJECT: BATTLE AGAINST COUNTERFEIT GOODS UNDERWAY,
REINFORCEMENTS EXPECTED

REF: NAIROBI 02393

¶1. (SBU) SUMMARY: The Government of Tanzania (GOT) is establishing a comprehensive system for addressing the problem of counterfeit goods by improving existing legislation, preparing implementing regulations and seeking autonomy from the judiciary. In the meantime, the GOT's Fair Competition Commission (FCC) is using existing law and customs regulations to expose and destroy counterfeit goods. END SUMMARY.

¶2. (SBU) The FCC has located, seized, and destroyed caches of counterfeit goods in recent months, primarily upon their entry at the port of Dar es Salaam, Godfrey Mkocha, Director General of the Fair Competition Commission (FCC), and John Mponela, Head of the FCC's Anti-Counterfeit Department, told Emboff July 10. In May 2007, the FCC received a tip that counterfeit light bulbs, imported from China by a Chinese company operating in Dar es Salaam since 1998, were at the port. The FCC used customs regulations to open the container in question, confirmed the goods were counterfeits of the Dutch brand Phillips, and destroyed them in the presence of the media and at the cost of the importing company, increasing awareness and serving as a deterrent.

¶3. (SBU) Mkocha believes there are a relatively small number (no more than twenty) of counterfeit import operations in Tanzania, but that they are well-organized and well-connected. Counterfeit importers identify a fast-moving branded item, send a sample to a firm in Hong Kong or South East China and ask the firm to manufacture a container's worth of the item which the importer then sells at a price lower than that of the branded item. Mkocha noted this system of counterfeiting is popular with fast-moving branded clothing and is used by small businesses as well as larger operations.

¶4. (SBU) The "scourge" of counterfeit goods is affecting many unsuspecting and uneducated consumers in rural and urban areas, especially counterfeit medicine, food and electrical goods which often cause fires, Mkocha told Econoff July 12. Due to the dangers of sub-standard goods, Mkocha aims to "protect the people first, then the general merchandise." Mkocha and Mponela said they want to work closely with foreign businesses affected by the trade in counterfeit goods.

¶5. (SBU) John Mhina, Director of International Trade in the Ministry of Industry, Trade, and Marketing, told Emboff the

FCC "has the teeth to bite," expressing both his belief that the FCC is empowered to take action against the trade in counterfeit goods, and his positive view of the FCC's recent efforts.

¶16. (SBU) The FCC is enhancing the GOT's efforts to combat counterfeit goods by proposing amendments to the Merchandise Marks Act, Mkocha told Econoff. The Merchandise Marks Act outlaws the manufacture or importation of goods with forged or deceptive trademarks, false trade description, or false name or initials. The proposed amendments, which Mkocha expects Parliament to pass as part of an omnibus miscellaneous bill at the end of the current session, creates the position of Chief Inspector at the FCC and empowers the Minister of Industry, Trade and Marketing to appoint the Chief Inspector and other inspectors and to issue implementing regulations. Mkocha expects the amendments to grant the FCC greater autonomy, particularly from the judiciary, by granting investigatory and prosecutorial authority to the Chief Inspector. Current law requires the FCC to obtain a judicial order to perform a search and seizure.

¶17. (SBU) The FCC wants regulations which formalize the powers of a Task Force regarding intellectual property rights (IPR) and counterfeit issues, and address certain gaps in the Merchandise Marks Act. These gaps include the process for storing and destroying counterfeit goods, how to discourage frivolous allegations that goods are counterfeit, establishing an internal appeal mechanism and establishing modalities for paying fines. At the FCC's request, the Tanganyika Law Society drafted regulations which have been reviewed by stakeholders and the Attorney General so when Parliament passes the amendments, the Minister may sign and publish the regulations for immediate use. "With

regulations, three-quarters of the problems would be solved," Mkocha said.

¶18. (SBU) To further the fight against counterfeit goods, Mkocha suggested Dar es Salaam undergo a port audit similar to one conducted in Mombasa, Kenya in 2006, noting the potential for counterfeit goods to proliferate in Tanzania if authorities can't account for goods entering the country via the port. Mkocha added "counterfeits generate big money, so it's not difficult to buy influence at the port."

¶19. (SBU) COMMENT: Given the widespread believe that Tanzania's judiciary is susceptible to corruption and Mkocha's characterization of counterfeit traders as well-connected, his desire to obtain greater autonomy from the judiciary is highly practical. The FCC's swift action to amend the Merchandise Marks Act and put regulations in place before the October 2007 regional IPR conference in Dar es Salaam (reftel) is commendable and, if successful, indicates high-level support within the GOT to protect intellectual property. END COMMENT.
RETZER